

50



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER OF PATENTS AND TRADEMARKS  
Washington, D.C. 20231  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/297,406	04/29/1999	CHRISTOPH HEILAND	KKFIP005	9723

7590 12/02/2002

David Bogart Dort  
Perkins Coie LLP  
607 Fourteenth Street, NW  
Washington, DC 20005

EXAMINER

BRITTAIN, JAMES R

ART UNIT PAPER NUMBER

3677

DATE MAILED: 12/02/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/297,406

Applicant(s)

HEILAND, CHRISTOPH

Examiner

James R. Brittain

Art Unit

3677

-- Th MAILING DATE of this communication appears on the cov r she t with the corr spondence addr ss --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 24 October 2002.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 3-7, 9-14, 16-18, 20-26 and 28-32 is/are pending in the application.
- 4a) Of the above claim(s) 3, 6, 7, 11, 13, 14, 16-18, 20, 21, 24-26, 28, 29, 31 and 32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 4, 5, 9, 10, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 12 and 30 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION*****Continued Examination Under 37 CFR 1.114***

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on October 24, 2002 has been entered.

***Allowable Subject Matter***

The indicated allowability of claims 4, 5, 9, 10, 22, and 23 is withdrawn in view of further review and a different reading of these claims in view of the reference(s) to Visser et al. (US 5625931) and D'Eugenio (US 3832757). Rejections based on the reference(s) follow.

Claims 12 and 30 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Election/Restrictions***

Claims 3, 6, 7, 11, 13, 14, 16-18, 20, 21, 24-26, 28, 29, 31, and 32 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species, there being no allowable generic or linking claim. Election was made **without** traverse in Paper No. 5.

***Claim Rejections - 35 USC § 112***

Art Unit: 3677

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 5 and 23 are rejected under 35 U.S.C. 112, first paragraph, as containing subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

There is no basis in the specification as filed for a species with not only a unitary spring device that forces the pincer portions apart in addition to the biasing force as claimed in claim 4, but also a further spring device that forces the pincer portions apart in addition to the biasing force as stated in claim 5. Claim 23 is rejected because it depends on a claim that includes new matter.

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 4, 5, 22, and 23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The term "the pincer portion" (claim 4, line 8) lacks clear antecedent basis since the antecedent term is plural. It is suggested that this term be made plural.

The passage "a spring device forces the pincer portions apart in addition to the biasing force" (claim 5, line 2) is unclear since claim 4 recites a spring device already in

Art Unit: 3677

lines 8-9 and it is not particularly pointed out what additional structure this language is referring to.

The remaining claims are indefinite because they depend from indefinite claims.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 4, 5, 22, and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Visser (US 5,625,931) in view of D'Eugenio (US 3,832,757).

Visser '931 (figure 4) teaches clamp structure with apertures 38 in the handles. There are flexible bands forming plastic joint 44, which bias the jaws together in the closed configuration (col. 2, lines 45-48). There is also a one piece and hence unitary spring device 58 that aids in forcing the pincer portions apart in addition to the biasing force (col. 3, lines 48-53) in which the unitary spring can be overmolded and helps maintain the biasing force over long periods when the clamp is kept open and there may be limited creep in the plastic joint 44. The difference is that it is not stated that extrusion is the method by which the clasp with its hollow portions is made. However, D'Eugenio (figures 1, 2) teaches that it is well known to use the extrusion process which can form apertures in the handles of the clamp so as to quickly form the clamps in an economical manner (col. 2, lines 29-31). It would have been obvious to use the extrusion process to form the apertures in the handles and other areas of the clamp of

Art Unit: 3677

Visser '931 in view of D'Eugenio suggesting that it is known that extrusion can form such a configuration, apertures in the clamp structure, and rapidly manufacture the clamps. As to claims 22 and 23, the an extrusion process is clearly shown in the extrusion process of D'Eugenio as connecting the clamping elements together as shown in figure 1 in which gripping or clamping points are coextruded in the form of the clamping jaws and manually grasped gripping points forming the handles occurring on each half clamp and between adjacent half clamps that are subsequently severed to form a plurality of half clamps. It would have been obvious to use such an extrusion process applied to the clamp of Visser et al. to facilitate formation of the clamping devices and in a high speed manner. Claims 22 and 23 nominally recited gripping or clamping points and the length of plastic 3 has such structure that is coextruded.

Claims 9 and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over D'Eugenio (US 3832757).

D'Eugenio (figures 1, 2) teaches a process for manufacturing clamping devices 1, comprised of: extruding a length of plastic 3 with hollow chamber profiles as shown in figures 1 and 2 to form a multiplicity of clamping devices, after extrusion the clamping devices are severed from the extruded length by hot wires 2 in desired widths; and after extrusion and severing, applying a biasing force, the force generated in a calibration zone wherein a coil spring is applied to the clamp halves to bias the grip jaws together. The difference is that the applying of the biasing force occurs after the severing step. However, the switching of the order so that the applying of the biasing force occurs prior to the severing step would have been obvious in view of the selection of the reversal of

Art Unit: 3677

performing the process steps is obvious as there is no new or unexpected result obtained thereby *In re Burhans*, 154 F.2d 690, 69 USPQ 330 (CCPA 1946); *Ex parte Rubin*, 128 USPQ 440 (Bd. App. 1959).

Any inquiry concerning this communication or earlier communications from the examiner should be directed to James R. Brittain whose telephone number is 703-308-2222. The examiner can normally be reached on Monday - Friday from 5:30 to 2:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, J. J. Swann can be reached on 703-306-4115. The fax phone numbers for the organization where this application or proceeding is assigned are 703-305-7687 for regular communications and 703-305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1113.



James R. Brittain  
Primary Examiner  
Art Unit 3677

JRB  
December 2, 2002